IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:- 25.10.2006

Coram:-

The Hon'ble Mr. Justice P.SATHASIVAM
and
The Hon'ble Mr. Justice S.TAMILVANAN

Habeas Corpus Petition No.859 of 2006

Lalitha ... Petitioner

Vs.

1.The State of Tamil Nadu,
Rep. by its Secretary to Government,
Prohibition and Excise Department,
Fort St.George, Chennai-9.

2.The District Magistrate and
District Collector,
Cuddalore District, Cuddalore. ... Respondents

Petition under Article 226 of the Constitution of India for the issuance of a Writ of Habeas Corpus to call for the records in C1/D.O/03/2006 dated 10.07.2006 by the second respondent herein and quash the same as illegal and consequently direct the respondents to produce the detenu Sekar @ Kora Sekar, S/o Duraisamy, who is now confined in Central Prison, Cuddalore, before this Court and set him at liberty.

For Petitioner : Mr.K.Gandhi Kumar
For Respondents : Mr.M.Babu Muthu Meeran
Addl. Public Prosecutor

O R D E R

(Order of the Court was made by P.SATHASIVAM,J.)

The petitioner, who is the wife of the detenu, by name Sekar @ Kora Sekar, who is detained as a ''Goonda" as contemplated under the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Slum Grabbers and Video Pirates Act, 1982 (Tamil Nadu Act 14 of 1982), by the impugned detention order dated 10.07.2006, challenges the same in this Petition.

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2. Heard learned counsel for the petitioner as well as learned Additional Public Prosecutor for the respondents.

3. At the foremost, the learned counsel for the petitioner, by drawing our attention to the details stated in paragraph Nos.3(iii) and 5 of the grounds of detention, submitted that the detention order has to be quashed on the ground of non-application of mind on the part of the detaining authority. He also contended that without sufficient material, the detaining authority has arrived at a conclusion that the remand of the accused/detenu was extended up to 19.07.2006.

4. In the light of the said contention, we verified the relevant paragraphs. In paragraph No.3 sub clause (iii), the detaining authority has stated that "During the course of investigation, the Inspector of Police produced the accused Thiru.Sekar @ Kora Sekar before the Court of District Munsif cum Judicial Magistrate, Neyveli on 21.06.2006 and has been remanded to judicial custody till 05.07.2006. Further his remand was extended up to 19.07.2006. Now he is presently lodged at Central Prison, Cuddalore....". Again, in paragraph No.5, the detaining authority has stated that " I am aware that Thiru Sekar @ Kora Sekar has been remanded to judicial custody upto 19.07.2006 and lodged at Central Prison, Cuddalore in connection with the ground case in Cr.No.215/2006.....". The above references clearly show that after the initial order of remand on 21.06.2006, the accused/detenu has been remanded to judicial custody on 05.07.2006 and up to 19.07.2006. We verified the paper book supplied to the detenu. The initial order of remand report which is available at page No.160 of the paper book shows that the accused was produced at 1.30 p.m. on 21.06.2006 and he was remanded till 05.07.2006. There is no quarrel about the same. However, the remand extension order which is available at page No.162 of the same book, reads as under:

"Accused not produced. Accused to be produced on 19.07.2006."

The said order was passed on 05.07.2006 which shows that in view of the fact that the accused was not produced on 05.07.2006, the learned District Munsif cum Judicial Magistrate, Neyveli, directed the accused to be produced on 19.07.2006, which shows that there is no order by the learned Magistrate extending the remand of the accused/detenu till 19.07.2006 as stated in paragraph Nos.3(iii) and 5 by the detaining authority. There is no other material to show that the remand of the accused/detenu was extended by valid order by the Magistrate up to 19.07.2006. The said relevant aspect was neither considered by the detaining authority nor any clarification was sought for from the sponsoring authority. Apart from the said infirmity, as rightly pointed out by the learned counsel for the petitioner in the translated copy of the order dated 05.07.2006, it is mentioned as "எதிரி ஆஜர்படுத்தவில்லை. எதிரிக்கு 19.07.2006 வரை காவல் நீட்டிப்பு உத்திரவு வழங்கப்பட்டது." Though it is claimed that it is a translated version of the order dated 05.07.2006 which is available at page No.162, the translated version proceeds as if that the remand was extended till 19.07.2006. We are satisfied that it is a defective translation. On this ground also, the impugned order of detention is liable to be interfered with.

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5. Accordingly, the Habeas Corpus Petition is allowed and the impugned order of detention is set aside. The detenu is directed to be set at liberty forthwith from the custody unless he is required in connection with some other case or cause.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

gms

To

1.The Secretary to Government, State of Tamil Nadu,
Prohibition and Excise Department, Fort St.George, Chennai-9.

2.The District Magistrate and District Collector,
Cuddalore District, Cuddalore.

3. The Superintendent, Central Prison, Cuddalore

4. The Joint Secretary to Government, Public (Law and Order)
Fort St. George, Chennai-9.

5. The Public Prosecutor, High Court, Madras.

1 cc To Mr.K.Gandhi Kumar, Advocate, SR.49778.

HCP. No.859 of 2006

JRG(CO)
RVL 08.11.2006

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